

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

DUSTIN HOLM,)

Defendant.)

Case No. 03-220-E-BLW

ORDER

Pending before the Court is Defendant Dustin Holm's Motion for Change of Venue. Defendant asserts that the nature of the underlying charges will make it impossible for him to obtain a fair and impartial trial. Therefore Defendant asks pursuant to Rule 21(a) of the Federal Rules of Criminal Procedure that his case be transferred.

"A change of venue must be granted when there exists in the district 'so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial.'" *See United States v. Collins*, 109 F.3d 1413, 1416 (9th Cir. 1997) *quoting* Fed. R. Crim. P. 21(a). "Prejudice can be either presumed or actual." *See id.* "Prejudice is presumed when the record demonstrates that the community where the trial was held was saturated with prejudicial and inflammatory media

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publicity about the crime.” *See id.*

Defendant is charged with six counts of mailing threatening statements to various persons/agencies. Among those agencies are the Pocatello U.S. District Court Clerk’s Office and the Pocatello U.S. Marshall’s Office. Both of these offices are located in the Courthouse where the Defendant is scheduled to go to trial. Defendant argues that this creates a “strong appearance” of prejudice, given that the Court is affiliated with both of these offices. Defendant further points out that Count Two of the Indictment alleges that he sent a threatening communication to the Idaho National Engineering Laboratory (INEL). Defendant argues that several potential jurors will be or will know employees of INEL.

The Court cannot agree with Defendant’s statements. Simply because the allegations state that the Defendant sent threatening communications to employees who work in the courthouse does not require a finding or presumption that the community is so prejudiced or inflamed that Defendant could not receive a fair and impartial trial. Similarly, the fact that one of the alleged targets is a major employer in the community does not require a presumption that the Defendant will not be able to pick twelve impartial jurors. Therefore, the Court will deny Defendant’s motion for change of venue. Defendant can be assured however, that the targets of the alleged threats will not have contact with the jury pool and

chosen jurors.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that Defendant's Motion for Change of Venue (Docket No. 11) is DENIED.

DATED this 3rd day of June, 2004.



B. LYNN WINMILL
Chief Judge, United States District Court

United States District Court
for the
District of Idaho
June 7, 2004

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 4:03-cr-00220

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

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U.S. Marshal
HAND DELIVERED

Probation
HAND DELIVERED

☒ Chief Judge B. Lynn Winmill
☐ Judge Edward J. Lodge
☐ Chief Magistrate Judge Larry M. Boyle
☐ Magistrate Judge Mikel H. Williams

Visiting Judges:
☐ Judge David O. Carter
☐ Judge John C. Coughenour
☐ Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date:

6-7-04

BY:

WM
(Deputy Clerk)